

FEB 2 2010

U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

) DOCKET NO.1:07 CR 123-01  
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)

v.

JACK W. SHEPHERD

FINAL ORDER OF FORFEITURE

BY SUBSTITUTION OF MONEY JUDGMENT FOR FORFEITED PROPERTY

BY CONSENT

WHEREAS on March 7, 2008, a Consent Order and Judgment of Forfeiture was entered against the defendant pursuant to his plea of guilty;

WHEREAS, the Consent Order and Judgment of Forfeiture provided for the forfeiture of \$33,053.00 previously seized by the United States, two vehicles, twenty-five video poker machines, and a money judgment of \$651,801.00.

WHEREAS, the Judgment entered against the defendant on October 17, 2008, incorporated the Consent Order and Judgment of Forfeiture;

WHEREAS, the United States avers that the forfeiture of the \$33,053.00, the two vehicles, and the twenty-five video poker machines has been completed;

WHEREAS, the money judgment of \$651,801.00 has not been paid by the defendant;

WHEREAS, Fed. R. Crim. P. 32.2(e) and 18 U.S.C. § 853(p) allow the substitution of other property for property subject to forfeiture under an existing order of forfeiture;

WHEREAS, the defendant's Plea Agreement provided for the substitution of United States currency for the three tracts of real property, with the agreement of the United States;

WHEREAS, the defendant and the United States have agreed that United States currency in the amount of \$200,000.00 is an appropriate substitution for the equity in the three tracts of real property;

WHEREAS, the United States has agreed to release the three tracts of real property from forfeiture and from any further liens of the money judgment, or enforcement actions in this case;

WHEREAS, an error in the legal description of 837 Old Mars Hill Highway in the Consent Order and Judgment of Forfeiture is now corrected to read: Book 3739, Page 684, of the Registry of Deeds of Buncombe County, North Carolina;

WHEREAS, by oral agreement, the parties had previously agreed to the substitution of the equivalent tract of real property described in deed recorded in Book 4532, Page 1493, being 18.92 acres, in the Registry of Deeds of Buncombe County, North Carolina, for the property at Highway 23 North, described in deed recorded in Deed Book 279, Page 49, in the Registry of Deeds, Madison County, North Carolina, listed in the Consent Order and Judgment of Forfeiture;

WHEREAS, Fed. R. Crim. P. 32.2(c)(1) provides that "no ancillary proceeding" concerning possible third-party interests "is required to the extent that the forfeiture consists of a money judgment;"

WHEREAS, pursuant to Fed. R. Crim. P. 32.2(e)(1), the Court "at any time" may "amend an existing order of forfeiture;"

WHEREAS, the parties understand and agree that this Order does not affect the authority of the United States' Internal Revenue Service or the taxing agency of any state;

WHEREAS, there are no other agreements between the parties concerning the authority of the United States to enforce the remaining money judgment of \$651,801.00;

NOW, THEREFORE,

Pursuant to Fed. R. Crim. P. 32.2(c)(1), (e)(1), & (e) and 18 U.S.C. § 853(p) providing for the amendment of existing orders of forfeiture and for the forfeiture of substitute property, the Consent Order and Judgment of Forfeiture is amended and the following property is HEREBY FORFEITED to the United States:

**A money judgment against the defendant in the amount of \$200,000.00.**

The defendant is ordered to pay the money judgment to the United States within ten days of the entry of this Order.

The following three tracts of real property shall not be subject to any liens of the United States for the money judgment or the forfeiture actions in this case, and the forfeiture against the three tracts of real property is hereby DISMISSED:

- a) Real property located at 837 Old Mars Hill Highway, Weaverville, North Carolina, and described in deed recorded in Book 3739, Page 684, in the Registry of Deeds of Buncombe County, North Carolina;
- b) Real property located at 75 Reems Creek Road, Weaverville, North Carolina, and described in deed recorded in Book 4070, Page 0070 in the Registry of Deeds of Buncombe County, North Carolina;

c) Real property described in deed recorded in Book 4532, Page 1493, being 18.92 acres, in the Registry of Deeds of Buncombe County, North Carolina

The Court shall retain jurisdiction to enforce this Order and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

The money judgement of \$651,801.00 in the Consent Order and Judgment of Forfeiture remains in full force and effect, except as to the properties released herein.

Both parties shall bear their own costs, including attorneys' fees.

IT IS SO ORDERED.

This the 1<sup>st</sup> day of February, 2010

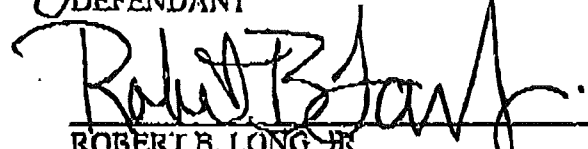
  
THOMAS SELBY ELLIS, III  
UNITED STATES DISTRICT JUDGE

WITH CONSENT:

EDWARD R. RYAN  
ACTING UNITED STATES ATTORNEY

 3/1/10  
THOMAS R. ASCIK  
ASSISTANT UNITED STATES ATTORNEY

  
JACK W. SHEPHERD  
DEFENDANT

  
ROBERT B. LONG, JR.  
COUNSEL TO JACK W. SHEPHERD